



Federal Communications Commission
Washington, D.C. 20554

May 29, 2009

DA 09-1216

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Washington, DC 20036

Re: TelAlaska, Inc. Request For Waiver or, in the Alternative, for Extension of Twelve-Month Construction Deadline – WQIQ306 and WQIQ308

Dear Mr. Lopatkiewicz:

This letter addresses the above-captioned Request For Waiver or, in the Alternative, for Extension of Twelve-Month Construction Deadline (Petition), filed by TelAlaska, Inc. (TelAlaska) on December 1, 2008, seeking a waiver or extension of the construction requirements of section 22.946 of the Commission's rules¹ for its two cellular B Block licenses located in the Alaska 1 – Wade Hampton Cellular Market Area (CMA315), Call Sign WQIQ306, and in the Alaska 2 – Bethel Cellular Market Area (CMA316), Call Sign WQIQ308.² Specifically, TelAlaska seeks permission to complete construction of its 20 authorized cell sites pursuant to a multi-year buildout schedule, rather than in one year as required by the rules.³ For the reasons stated below, we grant the Petition with conditions.

In its Petition, TelAlaska states that it is the holding company for two local exchange carriers in Alaska, Interior Telephone Company (ITC) and Mukluk Telephone Company (MTC).⁴ TelAlaska serves approximately 12,200 access lines in 23 communities throughout the state.⁵ TelAlaska indicates that in 2007, the Regulatory Commission of Alaska certificated another company to enter TelAlaska's two service areas as a competitive local exchange carrier.⁶ In response to having a competitive local exchange carrier enter its service areas, TelAlaska states that it applied for cellular licenses in order to offer bundled services for the benefit of its subscribers.⁷ On April 11, 2008, the Commission authorized Call Sign

¹ 47 C.F.R. § 22.946.

² TelAlaska, Inc. Request For Waiver or, in the Alternative, for Extension of Twelve-Month Construction Deadline, File Nos. 0003663275 and 0003663276, filed December 1, 2008 (Petition). On March 12, 2009, the Mobility Division of the Wireless Telecommunications Bureau issued a Public Notice seeking comment on TelAlaska's Petition. See "Comment Cycle Established for Request by TelAlaska, Inc. for Waiver and Extension of Time to Construct Cellular Facilities in Alaska," *Public Notice*, DA 09-580 (rel. March 12, 2009). On March 30, 2009, the Alaska Telephone Association (ATA), the only party to submit comments, filed in support of TelAlaska's Petition. See Comments of the Alaska Telephone Association, filed March 30, 2009 (ATA Comments).

³ Specifically, TelAlaska seeks to extend its construction deadline to October 31, 2012. See File Nos. 0003663275 and 0003663276. TelAlaska proposes to complete construction of four sites in 2009, seven sites in 2010, six sites in 2011, and three sites in 2012. Petition at 7.

⁴ *Id.* at 1.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*

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WQIQ306, covering five locations in CMA316, and Call Sign WQIQ308 with 15 locations in CMA315. Pursuant to section 22.946(c), TelAlaska was required to construct each of its cell sites by April 11, 2009.⁸

TelAlaska argues that a series of challenges beyond its control prevent it from meeting its construction deadline.⁹ First, TelAlaska argues that the remote locations of its planned cellular sites make it infeasible to meet a one-year construction deadline.¹⁰ TelAlaska states that none of the communities that it plans to serve is located on a road system or is accessible by rail line.¹¹ Instead, delivery of construction materials and equipment is accomplished by plane, barge or shallow draft vessels.¹² TelAlaska also argues that its construction efforts are further limited by Alaska's "notoriously" short construction season.¹³ TelAlaska argues that these factors make it logistically infeasible for a small company like itself to complete construction of 20 cellular sites in a one-year period.¹⁴

TelAlaska further asserts that operational and financial factors in addition to the remoteness of its proposed cellular sites and the short construction season also support grant of its Petition. Specifically, TelAlaska argues that the sudden passing of the company's president in April 2008 resulted in a temporary loss of leadership for the company, and that the transition to new management and control of the company took a toll on "new operational" initiatives, including deployment of TelAlaska's cellular system.¹⁵ TelAlaska also states that an unexpected funding restriction imposed by its chief funding source limited its ability to construct its cellular system.¹⁶ TelAlaska further asserts that its funding limitations were exacerbated by the fact that, shortly after receiving its cellular authorizations, it became necessary for TelAlaska to begin an upgrade of the switches of one of its local exchange subsidiaries in order to provide sufficient port capacity for its cellular system.¹⁷ Finally, TelAlaska states that it intends to apply for Universal Service Fund support, and that in order to qualify for Eligible Telecommunications Carrier (ETC) status, it must be able to demonstrate to the Regulatory Commission of Alaska that it has both the commitment and capability to provide wireless service throughout its MTC and ITC study areas.¹⁸ To do so, TelAlaska argues, it must show, as a starting point, that it is authorized to provide cellular service throughout its study areas.¹⁹

⁸ The construction period for Phase II cellular facilities is one year, beginning on the date the authorization is granted. *See* 47 C.F.R. § 22.946(c).

⁹ Petition at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* TelAlaska states that its subsidiary, MTC, received a "significant" order for interconnecting trunk lines from a competitive wireless provider that absorbed all of the remaining trunking capacity on five of MTC's central office switches.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

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As noted, the construction deadline for the 20 locations subject to TelAlaska's Petition was April 11, 2009. Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, TelAlaska's authorizations for Call Signs WQIQ306 and WQIQ308 terminated automatically as of the construction deadline if TelAlaska failed to meet the requirements of section 22.946(c) unless the Commission waives or extends the construction requirements.²⁰ A waiver may be granted if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²¹ Additionally, an extension of time to complete construction may be granted, pursuant to section 1.946(e), if the licensee shows that the failure to complete construction is due to causes beyond its control.²²

In light of the unique logistical difficulties associated with the prospective sites, we find it equitable to waive TelAlaska's April 11, 2009 construction deadline and allow TelAlaska to build its 20 cell sites pursuant to an extended construction schedule. Construction of these facilities is unusually difficult, involving complications generally not experienced in other areas of the country. As TelAlaska notes, the towns and villages in which it will be deploying its cellular service are located in some of the most remote regions of the United States, and, due to the lack of road or rail access, all resources necessary to construct the sites must be flown in or brought in by ship.²³ Such difficulties are compounded by the abbreviated window within which TelAlaska is able to deploy its facilities. For example, TelAlaska notes that the construction season in areas along the Bering Sea begins in late May and ends by mid-September. Moreover, TelAlaska states that the construction season further north is even shorter, allowing construction only between June and August.²⁴ TelAlaska also notes that, even during the construction season, poor weather conditions can disrupt air transport, leading to delays or disruptions in deployment.²⁵

Further, we find that grant of a waiver in this instance would serve the public interest by permitting TelAlaska to provide additional telecommunications options to remote, rural portions of Alaska. The Commission has emphasized that one of its main public policy objectives is to encourage the deployment of wireless services in rural areas.²⁶ With respect to wireless services, the Commission

²⁰ 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

²¹ 47 C.F.R. § 1.925. The Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving construction requirements on a case-by-case basis. *See* Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Red 4957, 5019 (1994), *citing WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

²² 47 C.F.R. § 1.946(e).

²³ *Id.* at 2.

²⁴ *Id.* ATA agrees that the remoteness of Alaskan communities, the limited means by which material and personnel can be transported to cell sites, as well as the short construction season support granting relief to TelAlaska. *See* ATA Comments at 1-3.

²⁵ *Id.*

²⁶ *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate

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established a base-line definition of a rural area as a county or a county equivalent with a population density of 100 persons per square mile or less.²⁷ In the instant case, 16 of the 17 county equivalent areas encompassed by TelAlaska's two cellular licenses have a population density between 0.1 and 3.1 persons per square mile, while the remaining county equivalent area has a population density of 11.3 persons per square mile.²⁸ Over 93 percent of the counties in the United States have a greater population density than 16 out of the 17 areas associated with TelAlaska's two cellular licenses, and 81 percent of the counties have a population density greater than the remaining area.²⁹ The rural and remote nature of the areas TelAlaska intends to serve, along with the abbreviated three- to four-month construction season lead us to conclude that the strict application of the one-year construction period would be unduly burdensome, and that grant of the waiver would be in the public interest.³⁰ Accordingly, we grant TelAlaska's request for waiver and extend the construction deadline for Call Signs WQIQ306 and WQIQ308 to October 31, 2012.³¹

However, in order to ensure that TelAlaska proceeds with timely construction of its 20 cellular sites, we condition our grant of its Petition on the following: First, TelAlaska must construct and place into operation at least two of its authorized cell sites in 2009, 2010 and 2011, respectively, and construct and place into operation all remaining sites by October 31, 2012. Further, TelAlaska must file an annual Construction Status Report no later than October 31st of 2009, 2010, and 2011, respectively. Each Construction Status Report must include information sufficient for the Mobility Division to determine TelAlaska's progress in constructing its facilities as required.³² The status reports must be filed electronically in the Universal Licensing System under the applicable call sign. Failure to comply with the conditions of this waiver grant, including timely submission of required status reports, may result in Commission enforcement action, modification of the waiver, or termination of TelAlaska's licenses.

Capital Formation, WT Docket Nos. 02-381, 01-14, 03-202, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 19078 (2004) (*Rural Report and Order*).

²⁷ *Rural Report and Order*, 19 FCC Rcd at 19086-87 ¶¶ 10-11.

²⁸ Population densities are based on 2000 Census figures. See <www.census.gov/population/www/censusdata/density.html>.

²⁹ *Id.* In its Petition, TelAlaska underscores the rural nature of the communities to be served, noting that the largest of the communities has a population of 3,500, while many have populations of 200 people or less. See Petition at 1.

³⁰ Because we conclude that the unusual logistical problems involved in constructing the sites at issue as well as the public interest served by extending cellular service to remote, rural areas of Alaska are sufficient to warrant relief, we find it unnecessary to consider other arguments made by TelAlaska in support of its Petition. We note, however, that the Commission has generally found that financial considerations or consequences resulting from a licensee's business decisions do not constitute unique circumstances sufficient to warrant extension or waiver of a licensee's obligations. See, e.g. *Redwood Wireless Minnesota, L.L.C. and Redwood Wireless Wisconsin, L.L.C. Request for a Waiver and Extension of the Broadband PCS Construction Requirements*, *Order*, 17 FCC Rcd 22416 (WTB 2002); Letter to Delaney M. DiStefano, Esq., from Kelly Quinn, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, 17 FCC Rcd 10418 (WTB 2002); *Applications of Winstar Wireless Fiber Corporation and New Winstar Spectrum, LLC, Request for Waiver of Sections 101.55(a), 101.63(a), 101.65(a) and (b), and 101.305(a) and (d) of the Commission's Rules*, File No. 0000723317, *Order*, 17 FCC Rcd 7118 (WTB 2002).

³¹ See *supra* note 3.

³² At a minimum, the status reports must identify the cell sites that have been constructed, and must specify that the facilities are operating consistent with the technical parameters authorized for the sites.

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Accordingly, IT IS ORDERED that, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 303(r) and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request For Waiver or, in the Alternative, for Extension of Twelve-Month Construction Deadline, filed by TelAlaska, Inc., File Nos. 0003663275 and 0003663276, IS HEREBY GRANTED to the extent provided, and subject to the conditions set forth herein.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau